

FILED

JAN 30 2019

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
CLARK FORK DIVISION
ROCK CREEK BASIN (76E)

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ORDER GRANTING REQUESTED EXTENSION IN PART

The United States has requested a second ninety-day extension of the objection period in Basin 76E. One ninety-day extension has already been granted because of a prior request by the United States. The current objection period will have lasted 271 days when it ends on February 5, 2019.

The United States supplies two arguments in support of its request. The first is that the federal government shut down for five weeks due to a lapse of funding. The United States attorneys assert they were not able to work during the shutdown and need more time to prepare objections. The second argument is that the United States is also working in Basin 41G, which has an objection period that closes at about the same time as 76E. The United States asserts that the proximity of these two deadlines has added to its workload.

This Court recently signaled that requests for extension of objection periods would no longer be granted without a showing of good cause. The Court stated it “will expect parties to specifically identify unique obstacles, problems, or circumstances that prevent them from preparing and filing objections before requests for extensions will be granted in the future.” Corrected Order Denying Request for Extension of Objection Period at 2, Basin 76E (Jan. 28, 2019).¹

¹ The Court adopts the citations to law and rationale of its January 28 order in this order.

That ruling was in part a response to what had become an unsustainable pattern of conduct on the part of objectors. That pattern consisted of routine extension requests arriving at the end of objection periods, followed by a request for another extension once the end of the first extension approached. These requests were usually supported by nothing more than references to the press of other business. With repetition, these requests became meaningless canards.

The Water Court tacitly encouraged this pattern of behavior by routinely granting such requests. Those days are now over.

As explained in this Court's January 28 order, parties seeking future extensions must provide compelling reasons for their requests. Delaying work on objections until the end of an objection period may cause problems for which relief may not be available. Objectors will be expected to supply specific and compelling support for their requests. They may be expected to demonstrate through testimony taken under oath that they have engaged in a good faith effort to prepare and complete objections from the beginning of the objection period rather than waiting until the end.

The question now before the Court is whether the two reasons given by the United States are enough to grant an extension.

The shutdown of the federal government was not caused by bad luck, an accident, or an act of god. It was a calculated political decision. It was also arguably foreseeable, given that such events, at least recently, have become more frequent and the government was presumably aware its funding would lapse without fresh appropriations.

Although the United States' ability to participate in Montana's general stream adjudication was undoubtedly impacted by the shutdown, it remains unclear when work on potential objections in Basin 76E began, to what degree the shutdown caused the government's predicament, or whether objections could have been completed if work on them had started earlier.

The United States asserts its present situation is made graver by the coincidence of objection deadlines in this basin and Basin 41G. While this argument is understandable, it may not be enough to carry the day in the future.

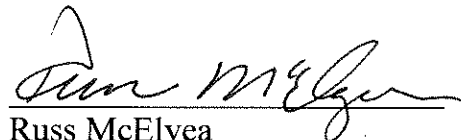
As noted in its January 28 order, the Water Court has many decrees to issue before the adjudication is complete. For years, the adjudication proceeded at a constant pace and the issuance of decrees was not as frequent as now. The pace of decree issuance will increase in the future. That means objection deadlines will be closer together and may often fall within the same month, as they have here.

Acceleration in the pace of decree issuance will require changes from participants in the adjudication process. Parties will need to carefully assess how to effectively deploy limited resources within compressed time frames or obtain more resources.

In sum, the reasons given by the United States to support an extension are incomplete. It has not shown why the 271 days already allocated to preparation of objections has been insufficient. Nevertheless, the Court recognizes that its reluctance to grant extensions going forward represents a departure from practices in the past. In such cases, the best way forward is often to signal intentions clearly and give participants a reasonable opportunity to adapt to change.

Accordingly, the objection period in Basin 76E is extended to **March 22, 2019**.

DATED this 30th day of January, 2019.


Russ McElyea
Chief Water Judge

Holly Jo Franz
Ryan McLane
FRANZ & DRISCOLL, PLLP
PO Box 1155
Helena, MT 59624-1155
(406) 442-0005
hollyjo@franzdriscoll.com
ryan@franzdriscoll.com

Judith E. Coleman, Trial Attorney
Natural Resources Section
Environment & Natural Resources Division
US Department of Justice
PO Box 7611
Washington, D.C. 20044-7611
Phone (202) 514-3553
Fax (202) 305-0506
judith.coleman@usdoj.gov

Roselyn Rennie
Special Assistant US Attorney
Office of the Solicitor
2021 4th Ave North, Suite 112
Billings, MT 59101
(406) 247-7545

Jennifer Newbold
US Department of Agriculture
Office of General Counsel
26 Fort Missoula Road
Missoula, MT 59804
jennifer.newbold@ogc.usda.gov

This Order Only:
John Peterson
Adjudication Bureau Chief
Montana DNRC
PO Box 201602
Helena, MT 59620-1602
(406) 444-6618
johnpeterson@mt.gov
(By Email Only)

This Order Only:
Nancy Hughes, Records Unit
Montana DNRC - Water Rights Bureau
PO Box 201601
Helena, MT 59620-1601
nahughes@mt.gov
(By Email Only)